IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

MFA.No. 380 of 2000()

OPMV.1023/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT:

Unnikrishnan, aged 27 years, S/o. Phalgunan,
Muthangaparambil House, Kuttamangalam Desom,
Edathuruthy P.O., Trichur District.

BY ADV. SRI.T.RAVIKUMAR

RESPONDENTS:

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1. K.V.Sivadas, "Muthu Rashmi", Vadakkunchery, Kannadi P.O., Palakkad District.

2. Sunil Kumar, S/o. Kesavan, Kolathumkattil House, P.O. Edathuruthy, Trichur Dist.

3. M/s. United India Insurance Co. Ltd., Branch Office, Door No.10/290, G.B. Road, Palakkad.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.

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M.F.A.No.380 of 2000

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Dated this the 23rd day of August, 2007.

JUDGMENT

KOSHY,J.

Appellant/petitioner met with a motor accident due to the negligence of the driver of the vehicle insured with the third respondent - Insurance Company. Even though the above allegations were found, the Tribunal has awarded only Rs.1,31,000/- against the claim of Rs.2,62,500/-. Only the quantum of compensation is disputed in this appeal.

2. The claimant was 27 years at the time of the accident. According to him, he was working as a Receptionist in Hyderabad and he was getting a monthly income of Rs.3,000/-. In the absence of evidence, the Tribunal has taken Rs.1,500/- as the monthly income. We see no ground to interfere with the finding with regard to the monthly income taken by the Tribunal. He has suffered from serious disability. The Tribunal has considered the injuries in paragraph 10 of the award, which is as follows:

> "After the accident, though the petitioner was taken to Medical College Hospital, Thrissur, he was subsequently taken to Aswini Hospital, Thrissur as evident from Ext.A2 certificate. The head of femur was fractured with dislocation. Under general anesthesia the loose bodies were removed and the

> dislocation is reduced and torn capsule was sutured and he was discharged on 29.4.1997. Later, there was a follow up as O.P. and he was re-admitted on 29.6.1997 for physiotherapy and was discharged on 7.8.2997. These facts are evident from Ext.A3 discharge card issued by the said hospital. Ext.A4, which is the discharge summary issued by the Metropolitan Hospital, Thrissur would reveal that on 31.12.1997 by bipolar total hip arthoplasty of left side was done under spinal anesthesia."

The Tribunal also notice that he has limbing. The Tribunal recorded the same as follows:

> "at the same time, it has to be remembered that he has a limbing at present (I had occasion to see the petitioner while he was examined before me). His hip flexion is also limited due to the internal fixation. It is stated by him, as per the doctor's advice, the internal fixation will have to be transplanted after 10 years."

Ext.A2 certificate issued from Aswani Hospital certified that there is 40% permanent disability. Further in Ext.A2 it is stated that he may require a total hip replacement. But for the permanent disability, no compensation was awarded on the multiplier basis. As the Tribunal did not rely fully on Ext.A2 certificate, only Rs.50,000/- was awarded. Claimant was hospitalised for 52 days. He had dislocated the hip and fracture to left femur. Tribunal find no valid reason for certifying the disability and even

if 20% is taken as disability, considering the second Schedule for granting 18 as multiplier, compensation will be 1500x12x20x18/100 = Rs.64,800/-. Hence, he is entitled to Rs.14,800/- as additional compensation on this count.

3. Considering the fact that at the time of passing the award implants were not removed and considering the nature of injuries, for future treatment expenses, we award Rs.15,000/- as additional compensation. The above additional amount of Rs.29,800/- should be deposited by the third respondent - Insurance Company with 7.5% interest over and above the decreed amount by the Tribunal. On deposit of the above amount, the appellant is allowed to withdraw the same.

Appeal is partly allowed.

J.B.Koshy,Judge.

V.Giri, Judge.

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